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February 11, 1993

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street
Washington, D.C. 20554

Re: Reply Comments
MM Docket No. 92-266

Dear Ms. Searcy:

Transmitted on behalf of The City of Hollywood, Florida, please find an original plus nine copies of its Reply Comments in the Cable Television Rule Making presently before the Federal Communications Commission in MM Docket No. 92-266.

Sincerely yours,

Matthew L. Leibowitz, Esq. MDR

Matthew L. Leibowitz
Special Communications Counsel to
The City of Hollywood, Florida

MLL/mdr

Enclosures

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List A B C D E

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 8 of	)	
the Cable Television Consumer	)	
Protection and Competition Act	)	
of 1992	)	MM Docket No. 92-266
	)	
Rate Regulation	)	

TO: The Commission

REPLY COMMENTS OF
THE CITY OF HOLLYWOOD, FLORIDA

Respectfully Submitted,

Alan B. Koslow
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to the City of Hollywood

February 11, 1993

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1. The City of Hollywood ("City"), Florida, hereby respectfully replies to Comments of Comcast Corporation, which until last month was one of the indirect corporate parents of Storer Cable Communications of Hollywood, Inc., the local franchisee for the City of Hollywood. These reply comments will address some, but not all of the issues to which the City takes exception.

Effective Competition

2. Comcast suggests that if the test for effective competition requires actual availability on a household-by-household basis, it would be inconsistent with the long standing economic learning. Rather, Comcast asserts that so long as a distributor is technically capable of selling in a particular franchise area, it should be deemed to offer that service to the entire area. In addition, Comcast argues that video telephone, multiplex television broadcasts and leased access users should be included in a cumulative accounting of any and all distributors for purposes of demonstrating effective competition. Moreover, Comcast suggests that there should be an irrebuttable presumption of compatibility for any multi-channel provider irrespective of what services are offered. The City respectfully disagrees.

3. First, the City believes that effective competition must be determined by actual competitors providing service within the franchise area in which the cable operator is providing service. The mere fact that the telephone company offers video on demand on

a regional basis or that direct broadcast satellite is offered on a national basis when there is no local provision of service is meaningless. In the absence of actual local subscribers, the cable operator would feel no competitive effects, and thus have no incentive to competitively structure its rates. Moreover, the concept of irrebuttable presumption of compatibility for any multiple-channel provider is simply a comparison of apples and oranges. Any analysis of comparability must take into consideration the number of channels offered and the types of programming services offered on those channels. Under no circumstances should the Commission consider multiplex television or leased access channels. These services do not provide competition to a local cable operator. Thus, in Hollywood for instance, Storer provides 57 channels of which 11 are local television stations, two are PEG channels, one is a leased access channel, and 43 are cable programming services. For a competitor to offer comparable service, we believe that the competitor must offer no fewer than 40 channels of cable programming services. Moreover, we strongly take issue that any measure of effective competition should be based on a cumulative accounting of all distributors within a given area. We believe this defeats the purpose of the statute and is contrary to the intent of Congress.

Local Franchise Authority

4. Commencing at page 17, Comcast argues that the Commission must conclude that the 1992 Act does not grant authority for rate regulation to local government. We respectfully disagree. Comcast's argument is merely a delaying tactic. While in the State of Florida local governments have express authority under state law, as well as home rule powers, for both franchising in general and cable rate regulation pursuant to Florida Statutes Chapter 166, we do believe that the Act itself, because of its pervasive nature, was intended to preempt any state law or local ordinances which would impair implementation of the Act. Accordingly, the Commission should adopt rules that would expedite local franchise authorities' ability to regulate basic cable rates as expressly intended by Congress.

Revocation Certification

5. Comcast suggests at page 19 that the Commission should reserve the right to revoke franchise authority jurisdiction through the petition of a cable operator on the basis of a defective certification after thirty days. This is simply ridiculous. The City believes that the FCC should act on a request by the cable operator for revocation of a franchise authority's jurisdiction only after it has the opportunity to review opposition pleadings by the local franchise authority. In many cases, local franchise authorities are simply not able to respond to such

pleadings within thirty days. Thus, the City believes that at least sixty days should be allowed for a local franchise authority to respond to any petition to revoke. Moreover, the City believes that the presumption should be maintained that the City has sufficient authority for rate regulation, and that a certification should be revoked only if the cable operator demonstrates through clear and convincing evidence that such authority is plainly lacking. Thus, the Commission must require its staff to undertake a careful analysis of such pleadings. Accordingly, the Commission must reject the imposition of any automatic time frame for its proper disposition of these critical issues.

6. At page 21, Comcast states that all appeals of basic rate proceedings should go to the Commission rather than the local courts. While the City does not take exception to this concept, the City believes the Commission must recognize that many local franchise authorities are without representation at the FCC and thus would be under substantial difficulty to participate in an FCC proceeding. Moreover, any appeal from a Commission decision to the United States Court of Appeals in Washington, D.C. would only further frustrate the participation of local franchising authority. Thus, while the City believes that it is appropriate for all appeals to basic rate authority proceedings to go to the Commission, it believes that any appeals from the Commission should be to the local federal court and not restricted to the Federal

Court of Appeals in Washington, D.C.

7. Comcast suggests that it is clearly appropriate that taxes and programming costs should be able to be passed through without the necessity of notice and review by the local franchise authorities. While it is clearly true that taxes are largely if not totally outside of the control of cable operators, this is not true with programming costs. Rather, programming costs are largely the direct result of negotiations between the cable operator and programming supplier. Thus, the City believes that any price increases due to programming costs must be subject to review by the local franchise authority. In addition, the Commission should require that the local franchise must receive at least a 3-day advance notice that the cable operator intends to pass through any increase in taxes and be provided with copies of any notices the cable operator intends to distribute to subscribers concerning such raises to insure their accuracy.[1]

Cable Programming Services

8. Comcast argues commencing at page 32 that whereas Congress intended basic-service-tier rate regulation to be comprehensive, it did not intend for rate regulation with respect to cable programming services to be comprehensive. The City takes exception to this position. While it is true that the Congress did

[1] In the past, the local cable operator in the City mischaracterized an increased tax as an automatic pass-through mandated by local authorities.

adopt two slightly different standards, a reasonable standard for cable basic service rates and an unreasonable standard for cable programming services rates, it is not true that the Congress adopted a bad actor or egregious rate standard. Such an approach would greatly diminish any effective rate regulation for cable programming services. An egregious standard or bad actor standard is much more substantial than in an unreasonable standard. There is simply no evidence in the Act itself that Congress intended merely to rein in the egregious rates for upper tier programming.

9. The City is sensitive to Comcast's concern of the effect of the Commission entertaining large number of complaints with respect to cable programming services. Thus, the Commission may want to entertain the alternative that the local franchise authority may, but would not be required to have an initial review of any complaint prior to the submission to the FCC. Thus, on a local basis it is likely that many complaints can be resolved.

Pay-Per-Channel or Per-Program Material

10. Comcast recognizes a potential ambiguity in the 1992 Act with respect to pay-per-channel or per-program material at page 39. As a result thereof, Comcast argues that such paid programming be exempt from bad actor scrutiny. Again the City respectfully disagrees. First, of course, there is no such thing as bad actor scrutiny. Such programming must be tested only by an unreasonable standard. Moreover, the Act clearly includes within rate

regulation any paid programming that is part of a package. The fact that such a package may simply be the sum of the charges for each separate channel or at a potential lower cost does not eliminate such rate regulation. The simple fact is that providing package offerings deprives a subscriber of unbundled choices. Thus, for instance, if offered only with prepackaged program offerings, a subscriber who has an interest in some but not all of the bundled channels will be forced to pay for all of the channels. This was not the intent of Congress. Clearly Congress here was providing not only a protection for subscribers in giving them the right to select unbundled programming, but was also providing an incentive for cable operators to make such unbundled offerings.

Complaint Procedures

11. Comcast argues at page 41 that 30 days from the time the cable operator provides notice of a rate increase should be adequate time to formulate and file a complaint by the local franchise authority. Unfortunately this is not likely the case. Local franchise authorities may have to seek formal Commission approval prior to filing such a complaint. Thus, depending on the timing of the increase and the necessity for advance notice to the Commission and Commission meeting dates, 30 days may very well be insufficient. Accordingly, the City respectfully requests no less than 60 days to file such an opposition. Moreover, while it is true cable operators are subject to providing refunds in case of

overcharges, the City believes that cable operators should not be unjustly enriched by overcharges and thus should also be subject to not only refunds but also to interest on those refunds.

12. With respect to complaints regarding rates for cable programming services, the City believes it is critical for the Commission to recognize that local cable operators have been raising rates and retiering services in anticipation of the Act and the implementing rate regulations. Thus, the Commission must not impose any prohibition for a local franchise authority to contest such rate increases as being unreasonable by providing for an effective date of the rate regulations. Rather, the Commission should note that Congress did not include any date limitations. Rather, the Congress sought to allow for any rollbacks of rates which were found to be unreasonable without regard to when they were adopted by the cable operator.[2]

Equipment

13. Comcast argues that the Act requires that equipment designed solely for the reception of basic service are subject to rate regulation, but converters, boxes and other equipment used to receive a cable programming service rather in lieu of or in

[2] The Commission should also be aware that under the guise of retiering, some cable operators, such as Storer, are actually raising rates. For instance, while Storer recently created a new "basic tier" and lowered the rate by $5.05, they raised the "expanded basic" rate by $7.05. Together these changes raised the rates $2.00 or 11%.

conjunction with the receipt of basic service are regulated as a cable programming service. This is not true. Rather, the Act requires that any equipment required for receipt of basic service is subject to rate regulation by the local franchising authority, whether or not such equipment is also used to provide any other type of programming. To adopt Comcast's proposal would deny the local franchise authority from critical rate oversight for equipment on many systems.[3]

Geographic Uniform Rate Structure

14. Comcast argues that the establishment of reasonable categories of service with separate rates and terms and conditions of service does not prohibit separate bulk rates to multiple dwelling units, hospitals, educational institutions and the like where the prices reflect lower transaction costs. While the City is clearly not opposed to providing services at the lowest possible level to any subscriber, it is also true that subscribers for individual residential units should not in any way subsidize these other users. Thus, the City believes that while lower rates can be provided on the basis of the terms and conditions of service, it should be subject to review by the local authority to ensure no

[3] The Commission must also clearly provide for local franchise authority oversight of items such as late fees to avoid excessive charges. For instance, Storer presently bills 30 days in advance and requires payment 15 days in advance. However, Storer imposes a late charge of $5.00 for not paying for services not even received. This computes to a 36% interest late charge per month.

cross-subsidization. In addition, the local cable operator must be prohibited from entering into bulk service contracts which exceed the term of the franchise to avoid using these agreements to bootstrap a renewal of the franchise.

Transition

15. While Comcast argues commencing at page 72 that a significant transitional period should be instituted with phase one beginning on April 3, 1993, and a more permanent set of regulation standards taking effect on January 1, 1995, the City strenuously objects to this concept. Clearly Congress intended only one set of standards to take effect as of April 3, 1993. There is simply no statutory basis for two sets of standards. Nevertheless, the City does recognize that there will be a potential need for not only cable operators but also subscribers to understand and avail themselves of the new regulatory standards that will be implemented not only by the FCC, but by local franchise authorities. Thus, the City would not object to a 60 day implementation period for the effective rules both on a federal level for rules at the FCC and for a local franchise rate regulation.

CERTIFICATE OF SERVICE

I, Maria Riveron, hereby certify that the attached Reply Comments submitted on behalf of The City of Hollywood, Florida was sent this 11th day of February, 1993 to the following person(s) via U.S. mail, first class postage prepaid:

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Counsel for Comcast Corporation

Maria Riveron
Signature